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June 12, 2019

VIA ECF ONLY

Magistrate Judge Arlene R. Lindsay
Long Island Federal Courthouse
814 Federal Plaza
Central Islip, New York 11722

Re: Sgt. Warren, Jameson v. Castella Imports, et al
Docket No.: 2:18-cv-04740

Dear Judge Lindsay:

Please accept this letter brief in support of Defendants Castella Imports, Clara Cortes, Chris Valsamos, Nicole Morello and Robert Roberts's (collectively "Defendants"), opposition to Plaintiff's Motion seeking a date certain for the production of the named Defendants, discontinue the discovery process, move the case to trial, and/or strike the Defendants' Answer. In sum, Plaintiff's motion is moot as Defendants have provided depositions dates for all but one of the named Defendants, Defendant Robert Roberts's deposition was held on June 5, 2019 and Defendant Nicole Morello's deposition is scheduled for tomorrow June 13, 2019.

• Procedural and Factual History

Defendants deny the majority of the "factual" statements in Plaintiff's motion and note the following relevant dates:

- On May 24th the undersigned sent Plaintiff an email which gave potential dates for Defendant Roberts, Valsamos, and Morello's deposition;
- Defendant Roberts's deposition was held on June 5th, one of the dates noted in Defendants' May 24th email;
- Defendant Morello's deposition is scheduled for June 13th, one of the dates noted in Defendants' May 24th email; and
- On June 6th the undersigned sent Plaintiff an email which re-confirmed the deposition dates for Defendant Morello for June 13th and provided a new deposition date for Defendant Valsamos.

• Legal Argument

FRCP 37 addresses the failure to make disclosures or to cooperate in discovery and sanctions. A district court has broad discretion to impose sanctions for failure to comply with its orders pursuant to Rule 37(b). (See Residential Funding Corp. v. DeGeorge Fin. Corp., 306 F.3d 99, 107 (2d Cir. 2002); Burgie v. Euro Brokers, Inc., 2006 U.S. Dist. LEXIS 22433 (E.D.N.Y.

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99, 107 (2d Cir. 2002); Burgie v. Euro Brokers, Inc., 2006 U.S. Dist. LEXIS 22433 (E.D.N.Y. Mar. 30, 2006). Among the factors relevant to a court's exercise of its discretion to impose sanctions are: (1) the willfulness of the non-compliant party or the reason for the noncompliance; (2) the efficacy of lesser sanctions; (3) the duration of the non-compliance, and (4) whether the non-compliant party has been warned of the consequences non-compliance. (See Bambu Sales, Inc. v. Ozak Trading, Inc., 58 F.3d 849, 852-54 (2d Cir. 1995)).

In this case, Defendants have provided Plaintiff with deposition dates and the deponents have been produced and are planning to be produced on the dates offered to plaintiff. Defendant Valsamos, President of Defendant Castella, has a busy schedule and required his deposition to be rescheduled on one occasion. Defendants promptly provided Plaintiff with a new date for Defendant Valsamos.

As to Defendant Cortes, a former employee, Defendants respectfully request that this Court enter an "on or before" date of July 12, 2019 for her deposition to allow time for Defendants to coordinate with Ms. Cortes, and this date would be prior to the close of discovery on July 29, 2019.

Plaintiff has not provided Defendants with potential dates for his client's deposition in writing. During one meet and confer telephone conference, Plaintiff stated that his client would be available June 25, 2019, a date the undersigned is not available. Therefore, Defendants respectfully request that any order from the Court include an "on or before date" for Plaintiff's deposition as well.

For the foregoing reasons, Defendants respectfully request that the Court Deny Plaintiff's motion in its entirety.

Very truly yours,



CHRISTOPHER S. DEL BOVE

CDB/rt